



# THE ATTORNEY GENERAL OF TEXAS

AUSTIN 11, TEXAS

JOHN BEN SHEPPERD  
ATTORNEY GENERAL

March 9, 1953

Hon. Henry B. Hardt, President  
Board of Examiners in the Basic Sciences  
407 Perry-Brooks Building  
Austin, Texas

Opinion No. S-16

Re: Eligibility of a board member to continue serving after terminating the employment with an institution of higher learning which was required to qualify for appointment to this office.

Dear Sir:

Your request for an opinion reads in part as follows:

"This is a request for information concerning eligibility of a member of The Texas State Board of Examiners in The Basic Sciences.

" . . .

"One of the members of the original Board appointed by Governor Shivers in 1949 was Dr. Ophelia C. Wesley of Daniel Baker College. Her first appointment was for a two year term. At the expiration of the two year term she was re-appointed by Governor Shivers for a six year term. A few weeks ago she severed connections with Daniel Baker College, and is at present not connected with a college or university. My question now is, is she still eligible to be a member of the Board? Her services are quite satisfactory and we will be glad to have her continue to be a member of the Board, if it is permissible under the law."

Qualifications of the Board of Examiners in the Basic Sciences are prescribed in Section 3 of Article

4590c, Vernon's Civil Statutes, which provides in part as follows:

" . . . The members of the Board shall be selected because of their knowledge of the basic sciences named in this Act, and each member shall be a professor, or an assistant or associate professor or an instructor on the faculty of the University of Texas, the Agricultural and Mechanical College of Texas, the Texas Technological College, Baylor University, Southern Methodist University, Texas Christian University, St. Edwards University, Rice Institute, Southwestern University, or any other institution or college located within the State of Texas of equal academic standing and facilities for instruction. Each member shall have resided in the State of Texas not less than one (1) year next preceding his appointment. No member of the Board shall be actively engaged in the practice of the healing art or any branch thereof, nor possess or have in the past possessed a license to practice the healing art or any branch thereof, nor be employed by any medical branch of any school or college."

Under the provisions above quoted, each member is specifically required to be a professor, assistant, associate professor or an instructor on the faculty of a college within the State of Texas. The sole question for our determination is whether this eligibility requirement applies only to the time of appointment or if it is of a continuing nature. Although we have been unable to find any Texas case on this question, it is stated in 88 A.L.R. 828, that "Eligibility to public office is of a continuing nature, and must subsist at the commencement of the term, and during the occupancy of the office." State ex rel. Coe v. Harrison, 217 Ala. 80, 114 So. 905 (1927); Jeffries v. Rowe, 63 Ind. 592 (1878); State ex rel. Johnston v. Donworth, 127 Mo. App. 377, 105 S.W. 1055 (1907); Com. v. Yeakel, 13 Pa. Co. Ct. 615 (1893); State ex rel. Fugina v. Pierce, 191 Wis. 1, 209 N.W. 693 (1926); Brown v. Woods, 2 Okla. 601, 39 Pac. 473 (1895). Contra: Plunkett v. Miller, 162 Miss. 149, 137 So. 737 (1931).

Hon. Henry B. Hardt, page 3 (S-16)

It is seen by the above quoted authorities that it is the general rule in other jurisdictions that an officer vacates his office whenever he becomes ineligible to hold the office, for eligibility requirements are of a continuing nature. This rule is in accordance with the general policy in this State in regard to the residence requirement set out in Section 14 of Article XVI of the Constitution of Texas which states:

"All civil officers shall reside within the State; and all district or county officers within their districts or counties, and shall keep their offices at such places as may be required by law; and failure to comply with this condition shall vacate the office so held." (Emphasis added.)

Since Dr. Ophelia C. Wesley is no longer connected with a college or university, it is our opinion that she is not now eligible to be a member of the Board of Examiners in the Basic Sciences.

#### SUMMARY

Each member of the Board of Examiners in the Basic Sciences is required by Section 3 of Article 4590c, Vernon's Civil Statutes, to be a professor, assistant, associate professor, or an instructor in the faculty of a college located within the State of Texas at all times during his or her term of office.

Yours very truly,

APPROVED:

JOHN BEN SHEPPERD  
Attorney General

J. C. Davis, Jr.  
County Affairs Division

C. K. Richards  
Reviewer

By *John Reeves*  
John Reeves  
Assistant

Robert S. Trotti  
First Assistant

John Ben Shepperd  
Attorney General

JR:am